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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,300	09/28/2001	Patrick E. McCallister	45105/KMO/C944	3920

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

3

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965300

Applicant(s)

McCallister et al

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-15 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-15 is/are rejected:
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1761

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Natt et al (EP 449643) in view of Yamamoto et al (4,803,088) further in view of Singleton (GB 2343438); Tokunaga (Jp 2001-61648), ONO et al (Jp 2001-48248), Taniguchi (Jp 9-254948), Otawara (Jp 10-72068), Nishioka et al (Jp 8-324653), Matsuno et al (Jp 11-332738) or Blackwell et al (5876811).

In regard to claim 1, Natt et al discloses a microwaveable pasta product comprising a dried pasta product and a microwaveable container comprising a bowl having a bottom with a curved perimeter and a general curved outer wall in "generally" perpendicular relation to the bottom, wherein the bottom and outer wall together define a cavity in which the dried pasta product is contained. Yamamoto et al is relied on as further evidence of the conventionality of the structure. Claim 1 recites that the bottom and wall is generally ovular. This indicates the shape is more oval than circular. As evidenced by the secondary art including Yamamoto et al, Singleton, Tokunaga, Ono et al, Taniguchi, Otawara, Nishioka et al Matsuno et al and Blackwell et al, it is notoriously well established in the art to provide microwaveable packaging or microwaveable trays with an oval or elliptical cross section base and walls (i.e., the structure which defines the cavity. For the most part, such oval or elliptical shapes are provided by the art to achieve more uniform heating but esthetics is another potential reason to provide such

Art Unit: 1761

a container shape. Since Natt et al and Yamamoto et al heat the pasta in the container, to modify Natt et al as further evidenced by Yamamoto et al and provide an oval or elliptically shaped container to achieve greater heating efficiency (i.e., heating uniformity) would therefore have been obvious. In regard to claims 2, 3, and 5-8, the particular ratio of length to width and the particular specific dimensions is seen to have been an obvious determination and an obvious function of the quantity of product in the container, the size of the product, the wall height of the container, etc. In regard to claims 4, 9, 10 and 11-13, the art taken as a whole teaches generally symmetrical cavities, a curved bottom (otherwise, a container could not be oval or elliptical), an area that varies over the height of the cavity (i.e., any container whose walls are anything but perpendicular), and a wall thickness within the recited range (e.g., Natt et al). In regard to the method claim 14, Natt et al teaches all of the steps except for using a generally ovular bottom and outer wall which would have been obvious in view of the art taken as a whole for the reasons given above. In regard to claim 15, both Natt et al and Yamamoto et al teach it was conventional to pour sauce over the cooked pasta.

The remainder of the references cited in the USPTO 892 forms are cited as art to interest.

It is noted that the specification appears to suggest that providing a somewhat ovular shaped container would decrease or prevent foaming of microwaved rehydrated noodles. What shape is this compared to? - a square or rectangular shaped container or even a circular shaped container? Also, it would appear that the height of the container versus its other two dimensions (i.e., its width and length would also be

Application/Control Number: 09/965,300
Art Unit: 1761

Page 4

significant factors in preventing foaming to say nothing of the quantity of the product.

None of these factors appear to be addressed nor is there any comparative data.

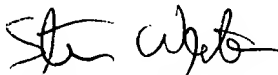
Clarification is requested.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn
June 3, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
6/4/03